

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PERFORMANCE SOLUTIONS, LLC)	
PLAINTIFF)	CIVIL ACTION
)	NO: _____
)	
v.)	COMPLAINT FOR PATENT
)	INFRINGEMENT
DICK’S SPORTING GOODS, INC.)	
)	
)	JURY TRIAL DEMANDED
DEFENDANT)	

Comes now the Plaintiff, by and through its undersigned counsel, Iandiorio Teska and Coleman, and brings this action for patent infringement against the Defendant. Plaintiff alleges as follows:

PARTIES

1. Plaintiff, Performance Solutions, LLC, is a Massachusetts Limited Liability Company having its principal place of business at 5 Commonwealth Avenue, Suite 2A, Natick, Massachusetts 01760.

2. Upon information and belief, defendant Dick’s Sporting Goods, Inc. (“Dick’s”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 345 Court Street, Coraopolis, Pennsylvania 15108.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to the provisions of 28 U.S.C. §§1331 and 1338(a).

4. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. §1391 and §1400(b).

5. Jurisdiction over the defendant Dick's is conferred in that, upon information and belief, defendant Dick's conducts business in the Commonwealth of Massachusetts and sells infringing products in the Commonwealth of Massachusetts. There are, for example, several Dick's stores in Massachusetts.

ALLEGATIONS

6. Plaintiff is the owner of all rights, title and interest in and to U.S. Patent No. 7,918,774 ("the '774 patent") which was duly and lawfully issued by the U.S. Patent and Trademark Office on April 5, 2011. The patent covers a therapeutic, fitness, and sports enhancement device. One version of the patented device is sold by Plaintiff as the "Thera-roll®".

7. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. §§ 271 et seq.

8. The '774 patent-in-suit is presumptively valid and enforceable pursuant to 35 U.S.C. §282.

9. Plaintiff approached Dick's offering Dick's an opportunity to sell the Thera-roll[®] and Dick's declined.

10. Thereafter, Dick's manufactured, or had manufactured, used, offered for sale, and/or sold one or more products which infringe the '774 patent. An example is Dick's "Thrive Textured Flexibility Roller".

COUNT I

INFRINGEMENT BY THE DEFENDANT

11. Plaintiff restates and realleges each of the allegations in paragraphs 1 through 10 of this Complaint as if fully stated herein.

12. Defendant infringes and has infringed the '774 patent by making, having made, using, offering for sale, and/or selling products which infringe the '774 patent.

13. Based on information and belief, Defendant's infringement has been and continues to be willful and deliberate.

14. Defendant's infringement of the '774 patent has injured the Plaintiff and caused the Plaintiff significant financial damage. Defendant's infringement will continue to

injure the Plaintiff and cause the Plaintiff to suffer financial damages in an amount that will be proven at trial.

15. Defendant will continue to infringe the '774 patent unless such infringement is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper, against the Defendant:

1. Enter judgment in favor of Plaintiff determining that Defendant infringes, and has infringed, the '774 patent in violation of 35 U.S.C. §271(a);
2. Permanently enjoin Defendant and its officers, agents, divisions, affiliates, subsidiaries, successors, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing the '774 patent;
3. Award Plaintiff monetary damages for infringement, in an amount to be proven at trial;
4. Award Plaintiff treble damages for any willful infringement pursuant to 35 U.S.C. §284;

5. Adjudicate, if appropriate, this an exceptional case and award Plaintiff the costs of this action and reasonable attorney fees pursuant to 35 U.S.C §285; and

6. Award Plaintiff prejudgment and post-judgment interest, attorneys' fees, costs and such other and further relief as the Court may deem just and proper.

4/25/11
Dated _____

Respectfully submitted,
Attorneys for the plaintiff,
Performance Solutions, LLC



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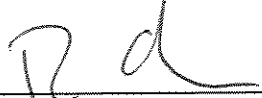
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CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF

Plaintiff, Performance Solutions, LLC, submits this CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.3. Performance Solutions, LLC has no parent corporation and no publicly held company owns 10% or more of the stock of Performance Solutions, LLC.

4/25/11
Dated

Respectfully submitted,
Attorneys for the plaintiff,
Performance Solutions, LLC



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